

Before the  
**Federal Communications Commission**  
Washington, DC 20554

In the Matter of	)	
	)	
Amendment of Part 2 of the Commission's	)	
Rules to Allocate Spectrum Below 3 GHz	)	
for Mobile and Fixed Services to Support	)	ET Docket No. 00-258
the Introduction of New Advanced	)	
Wireless Services, including Third	)	
Generation Wireless Systems	)	

**REPLY COMMENTS OF SIOUX VALLEY WIRELESS**

Sioux Valley Wireless ("SVW"), a provider of wireless broadband and multichannel video service to consumers in rural areas in and around Sioux Valley, South Dakota, hereby submits the following reply comments with regard to the FCC's *Fifth Notice of Proposed Rulemaking* ("*Fifth NPRM*") in ET Docket No. 00-258. As we explain below, it is imperative that any forced relocation of our operations on Broadband Radio Service ("BRS") channels 1 and 2 fully protect the wireless broadband service we are providing on those channels to consumers in rural and other underserved areas. We therefore urge the FCC to adopt the relocation proposals set forth in the comments of the Wireless Communications Association International, Inc. ("WCA") – if adopted, WCA's proposals will ensure that we will not be forced to bear the substantial cost of our own involuntary relocation, and that the relocation process will not otherwise cause irreversible damage to our services or our relationships with our customers.<sup>1</sup>

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<sup>1</sup> See WCA Comments on Fifth NPRM, filed Nov. 25, 2005.

By now the FCC is well aware of how SVW and others are addressing the need for wireless broadband deployment in rural communities. As noted by Commissioner Adelstein, a native of South Dakota:

I believe that wireless solutions are essential for rural America. Since I have been at the FCC, I have heard from wireless ISPs and mobile wireless companies who are doing their best to provide the latest technologies to all Americans, no matter where they live. So I take very seriously their suggestions about how the FCC can push rural wireless deployment. I am also mindful of our obligations to ensure that consumers of wireless services in rural markets are not left behind. Spectrum is the lifeblood of so many of the new wireless services and innovations that can light up the hardest areas to serve.<sup>2</sup>

For well over a decade SVW has answered Commissioner Adelstein's call for rural wireless deployment -- indeed, we are doing precisely what the FCC envisioned for the BRS/Educational Broadband Service ("EBS") spectrum when it adopted its original two-way rules for MDS/ITFS in 1997. Through the FCC's MDS BTA auction and a series of secondary market transactions, SVW has either licensed or acquired rights to use all available BRS and EBS channels in the Sioux Valley, SD market. In turn, through millions of dollars of investment and sheer perseverance, SVW has developed a fully operational, state-of-the-art BRS/EBS system that uses all 33 BRS/EBS channels (including BRS channels 1 and 2) to provide wireless broadband and multichannel video service to customers in Sioux Valley and surrounding communities in South Dakota, Iowa, Nebraska and Minnesota. The system's expansion has been substantial -- we presently have over 5,800 customers, nearly 2,300 of whom subscribe to our wireless broadband service. Importantly, many of

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<sup>2</sup> Statement of Commissioner Jonathan S. Adelstein re: *Facilitating the Provision of Spectrum-Based Services to Rural America and Promoting Opportunities for Rural Telephone Companies to Provide Spectrum-Based Services* (July 8, 2004).

our customers live in areas that have little or no broadband service available to them. Our broadband customer base thus has been growing at a healthy pace, averaging 25 net new customers per month.

Understandably, then, we are very concerned that the forced relocation of our broadband operations on BRS channels 1 and 2 will harm our business and the thousands of customers we serve in rural areas. The initial round of comments on the *Fifth NPRM* confirms that our concerns are justified – it appears that mobile wireless interests who will be bidding on the AWS spectrum are lobbying aggressively for outdated relocation procedures that serve their own needs exclusively, with no regard for their impact on the broadband service SVW and other BRS operators are delivering to underserved communities. That comes as no surprise: as pointed out by WCA, many new AWS licensees already do or will soon be doing what BRS channels 1 and 2 do now, *i.e.*, deliver broadband service directly to retail subscribers, and thus they have more than a passing interest in slowing the progress of BRS operators who offer consumers a competitive broadband alternative.<sup>3</sup> We hope that the FCC recognizes as much, and that it does not permit the mobile industry's economic self-interest to carry the day in this proceeding.

At the outset, under no circumstances should SVW or any other BRS operator be required to bear *any* of the costs of its own forced relocation from 2150-2162 MHz to any alternative spectrum. On this point, we are gratified that the *Fifth NPRM* reaffirms that AWS licensees will be responsible for funding the relocation of our

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<sup>3</sup> See WCA Comments at p. 11.

operations on BRS channels 1 and 2.<sup>4</sup> The burden of those costs on a small company like SVW are self-evident, particularly when one considers the financial and logistical difficulties associated with changing out customer premises equipment at thousands of customer locations with limited staff who are already fully occupied with the day-to-day operation of our business.

For the same reasons, we strongly oppose the FCC's proposal to "sunset" an AWS licensee's obligation to fund our relocation after 10 years.<sup>5</sup> In fact, as recommended by WCA, there should be no sunset at all.<sup>6</sup> To begin with, the simple fact is that AWS licensees are the direct beneficiaries of our eviction from the 2150-2162 MHz band, and will always remain so. As a matter of fairness, they should remain responsible for funding BRS relocation regardless of when it occurs. Furthermore, the FCC's rules give AWS licensees *15* years within which to establish substantial service, and AWS licensees can satisfy the substantial service criteria by building out to as little as 20% of the population in their geographically licensed service area. We therefore have no assurance that a winning AWS auction bidder will provide service in the Sioux Falls market before the 10-year sunset date arrives. Indeed, given the challenges of serving rural markets, it is more likely than not that an AWS auction winner would focus its deployments on more lucrative urban areas and put rural markets like Sioux Falls aside indefinitely. It therefore is not difficult to see how a winning AWS auction bidder (who will be a competitor to BRS) would have

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<sup>4</sup> See Fifth NPRM at ¶ 25.

<sup>5</sup> See *id.* at ¶ 26.

<sup>6</sup> See WCA Comments at pp. 28-30.

an incentive to delay its deployment in our market until after the sunset date, thus forcing us to fund our own relocation.<sup>7</sup> Again, we see no sensible justification for that result.

We also urge the FCC to reject the proposals by CTIA and T-Mobile that would require us to provide a binding estimate of our relocation costs prior to the AWS auction, and limit our reimbursement to 110% of that estimate.<sup>8</sup> Here the mobile industry's self-interest could not be more obvious. The FCC has never required such pre-auction estimates or imposed any such "cap" on reimbursable relocation expenses, and CTIA/T-Mobile's attempt to do so in this proceeding is merely a thinly-veiled attempt to force BRS operators to bear some of their own relocation costs. In any case, it makes no sense to require SVW to provide an estimate of its relocation costs when it does not know, among other things, when it will be relocated; the number of subscribers it will have at the time of relocation; who our spectrum neighbors will be and what equipment or network designs they will have deployed at the time of relocation; and what our labor and equipment costs for relocation will be, particularly since the equipment necessary for relocation is not available now.<sup>9</sup>

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<sup>7</sup> The same problem arises even if the FCC extends the sunset date to 15 years, as recommended by CTIA and Sprint Nextel. See CTIA Comments at pp. 7-8, Sprint Nextel Comments at 45.

<sup>8</sup> See CTIA Comments at pp. 9-10, T-Mobile Comments at p. 3.

<sup>9</sup> WCA has proposed a far more reasonable approach, under which a BRS operator would be required to provide the relevant AWS licensee with a detailed cost estimate after mandatory relocation negotiations fail, or if the BRS operator otherwise wishes to self-relocate or commence an involuntary relocation before WCA's proposed 10-year relocation deadline. See WCA Comments at pp. 22-24. Once the AWS licensee has approved the estimate (with the Commission's intervention in the event of a dispute), the requested funds are paid to the BRS operator, who then subsequently invoices the AWS licensee for any costs over and above

Nonetheless, to the extent the FCC deems it necessary, SVW is prepared to provide the FCC information regarding its existing base stations and current number of subscribers. An AWS auction participant may then review that information in tandem with its own plans for BRS relocation, and from there perform its due diligence as to its potential reimbursement obligations.

Furthermore, while SVW applauds the FCC's commitment to devising relocation procedures that minimize disruption to our operations,<sup>10</sup> disruption is exactly what will occur if the relocation procedures endorsed in the Fifth NPRM are adopted. Of particular concern, is the fact that the Fifth NPRM offers no protection for a BRS operator's proprietary customer information during the relocation process. Instead, it proposes to leave the process of involuntary relocation entirely in the hands of the party demanding relocation, meaning that an AWS licensee would be responsible for acquiring, testing and deploying our comparable facilities and then turning them over to us after they have been constructed.<sup>11</sup> Predictably, the mobile industry has expressed no objection to that approach, and WCA explains why: the Fifth NPRM's proposal effectively would require us to provide our competitor with the names and addresses of our subscribers, and then provide our competitor with access to our customer locations and, presumably, the customers themselves.<sup>12</sup> The anti-competitive implications of this are obvious, and the FCC therefore can and

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estimated costs (or, alternatively, reimburses the AWS licensee to the extent that actual costs were lower than estimated costs).

<sup>10</sup> See Fifth NPRM at ¶ 12.

<sup>11</sup> See id. at ¶ 25.

should eliminate the problem by giving the relocated BRS operator sole responsibility for selecting and deploying its comparable facilities and taking all other steps necessary to effectuate relocation, subject to full reimbursement by the relevant AWS licensee.<sup>13</sup>

Finally, the FCC absolutely must not prevent SVW or any other BRS operator from adding new subscribers or otherwise modifying their facilities before they are actually migrated to their replacement spectrum for BRS channels 1 and 2. WCA has it exactly right: “It is impossible to see the equity of giving an AWS licensee who has no immediate pressure to build its facilities the right to stop a competing BRS provider from improving its facilities while the AWS licensee develops its own deployment plans at its leisure. If AWS licensees are truly concerned about any preclusive effect of ongoing BRS system development in the 2150-2162 MHz band, they can eliminate the problem simply by commencing a mandatory negotiation and relocating BRS service providers sooner rather than later.”<sup>14</sup> Tellingly, even CTIA has recognized that BRS operators must be permitted to add new subscribers served by existing base stations.<sup>15</sup>

The above is not idle speculation: a freeze on subscriber additions and system modifications would in fact be devastating to SVW’s business. Indeed, it is ironic that

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<sup>12</sup> See WCA Comments at 10-14, Sprint Nextel Comments at 25.

<sup>13</sup> See WCA Comments at 14-16.

<sup>14</sup> See *id.* at 37-38.

<sup>15</sup> See CTIA Comments at 12.

Verizon is leading the charge against the BRS industry on this issue.<sup>16</sup> Surely, Verizon knows that the lifeblood of any wireless provider is the ability to add subscribers and thereby increase revenue, maximize return on investment and achieve economies of scale. Yet, Verizon would have the FCC prohibit residents of Sioux Falls and the surrounding area from subscribing to SVW's wireless broadband service solely to reduce an AWS licensee's obligation to pay SVW's relocation costs if and when that licensee decides to provide service in our market. It is hard to see how giving AWS licensees a chokehold on future BRS operations could possibly serve the public interest, and not surprisingly, the mobile interests have little to say on that point.

In sum, for the reasons set forth above and in WCA's comments, SVW urges the FCC to adopt BRS relocation rules that protect the broadband service we are providing to consumers in rural areas, and that otherwise ensure that the integrity of our network and of our customer relationships is not compromised by BRS relocation. We believe that WCA's proposals, if adopted, will help the FCC achieve that result. Adoption of the proposals offered by the mobile industry will not.

Respectfully submitted,

SIOUX VALLEY WIRELESS

By: /s/ Joel Brick  
Joel Brick  
Technical Director  
P.O. Box 20  
Colman, South Dakota 57017  
(605) 256-1648

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<sup>16</sup> See Verizon Comments at 8-9.